way. *Held,* that a railroad right of way was subject to assessment the same as any other land. *Gilsonite Construction Co.* v. *St. Louis, I., M., & S. Ry. Co.* (Mo. 1912) 144 S. W. 1086.

The weight of authority seems to be with the principal case, *Heman Construction Co.* v. *Wabash R. Co.* 206 Mo. 172; *St. Louis & N. R. Co.* v. *Barber Asphalt Paving Co.,* 197 U. S. 430. Some courts consider such an assessment valid when the land is held in fee; but invalid if the right of the railroad is a mere easement. *Chicago, R. I. & P. Ry. Co.* v. *Ottumwa,* 112 Iowa 300; *M. & St. Louis R. R. Co.* v. *Lindquist,* 119 Iowa 144. Of the courts that refuse to allow such assessment some have exempted the railroad because of statute or charter construction, *City of Philadelphia* v. *FairhillR. Co.,* 41 Pa. Super. Ct. 245; while others have denied the right altogether, *In Re East 136th Street in City of New York,* 111 N. Y. Supp. 916; *Naugatuck R. R. Co.* v. *Waterbury,* 78 Conn. 193. Some of those who hold that land used merely as a right of way is not subject to such assessments, hold the tax good when laid on land used for other railroad purposes, *viz.*: depot, sheds, switches, etc. *Erie R. Co.* v. *Paterson,* 72 N. J. L. 83. A rule allowing railroad property to be assessed if shown to be actually benefited specially is adopted in some cases. *Philadelphia* v. *Phila. & Reading R.,* 177 Pa. 292; *Erie R. Co.* v. *Peterson,* 72 N. J. L. 83.

MUNICIPAL CORPORATIONS — IMPROVEMENT DISTRICTS — ASSESSMENTS OUTSIDE OF SAME INVALID.—Defendant city passed an ordinance establishing an improvement district, and designating the properties comprising the same. The statute governing such districts provided that the ordinance creating the district should direct the clerk to advertise for bids, etc., and gave the property owners in the district an opportunity to be heard as to materials to be used, etc. In making the assessments for the improvement in question, property outside the improvement district was assessed for taxation, it being shown that such property was in fact specially benefited. Plaintiff, an owner of such outside property contests the validity of this assessment against his property. *Held,* such assessement is invalid. "The formation of the improvement district is the foundation for all subsequent proceedings," including the levying of assessments for the improvement. The statutes construed together show that only property within the improvement district is liable for the cost of the improvement. *McCaffrey, et al.* v. *City of Omaha* (Neb. 1912) 135 N. W. 552.

The general rule is that special assessments are levied against properties in proportion to the special benefits received. *Quill* v. *Indianapolis,* 124 Ind. 292, 23 N. E. 788, 7 L. R. A. 681. *In re Grant St.,* 17 Pa. Super. Ct. 459. *Sears* v. *Street Commissioners of Boston,* 173 Mass. 350, 53 N. E. 876; *Adams* v. *Shelbyville,* 154 Ind. 467, 57 N. E. 114, 49 L. R. A. 797, 77 Am. St. Rep. 484. CONTRA: *Rolph* v. *Fargo,* 7 N. D. 640, 42 L. R. A. 646. Many jurisdictions hold that the setting aside of a district for assessment is conclusive of the fact that property within the district is benefited. "If the legislation has fixed the district, and laid the tax for the reason that, in the opinion of the legislative body, such district is peculiarly benefited, that is conclusive." COOLEY, TAXATION, Ed. 1. p. 450. *Mayor, etc., of Baltimore* v. *Hughes,* 1 Gill, & J.

(Md.) 480; *Litchfield* v. *Vernon*, 41 N. Y. 123; *City of Philadelphia* v. *Field*, 58 Pa. St. 320. But in *Norwood* v. *Baker*, 172 U. S. 269, the Supreme Court decided that the assessment against property by districts without reference to the actual proportionate benefits received by each piece of property was void when such assessment exceeds the actual benefit. This same court later, however, declared that the decision in that case was limited to the peculiar circumstances there presented, and that a State legislature may authorize the creation of special taxation districts, and the assessment against properties within such districts without inquiry into the actual proportionate benefits received, either according to valuation or superficial area, *Webster* v. *Fargo*, 181 U. S. 394, or by the front foot rule, *Tonawanda* v. *Lyon*, 181 U. S. 389; 4 DILLON, MUN. CORP., Ed. 5 § 1436, ACCORD: *Prior* v. *Buehler, etc., Construction Co.* 170 Mo. 439, 71 S. W. 205. *Northern Pac. Ry. Co.* v. *Seattle*, 46 Wash. 674, 12 L. R. A. (N. S.) 121. 91 Pac. 244, 123 Am. St. Rep. 955. *Dickson* v. *Racine*, 61 Wis 545. 21 N. W. 620; *Adams* v. *City of Shelbyville, supra.* It would seem that if the legislative assignment of an improvement district is held conclusive as to the fact that all lands within the district are benefited, by a parity of reasoning it could be held that all lands without the district are conclusively presumed not to be specially benefited, proof of any actual amount of benefit being immaterial in either case. The rule in Michigan seems to be to the contrary, however. *Boussneur* v. *City of Detroit*, 153 Mich. 585. "Where property benefited by a proposed improvement is omitted from the district it will not avoid the special assessment." BALDWIN, MICH. TAXATION, p. 488. There is also a strong dissenting opinion to the same effect in the principal case.

MUNICIPAL CORPORATIONS—RECALL—MANDAMUS TO COMPEL CALLING OF RECALL ELECTION.—A city charter provided that upon the filing with the Common Council of a petition, signed by one-fourth of the registered electors and certified to by the clerk, asking for the recall of a municipal officer, the Council should order the holding of a recall election. Such a petition was filed with the City Council, asking that six of its nine members be recalled for misfeasance in office. The Council refused to order the recall election; and mandamus was sought to compel them to call such an election. *Held*, mandamus would lie. *Conn.* v. *City Council of City of Richmond* (Cal. 1912) 121 Pac. 714.

Recall provisions have been held not to be in conflict with constitutional provisions relating to tenure of office. The office is accepted subject to this power of recall in the electorate, and the duration of the term of office is dependent upon the wish of the majority as expressed at the polls. *Hilzinger* v. *Gillman*, 56 Wash. 228, 105 Pac. 471; *Bonner* v *Belsterling*, (Tex. Civ. App.) 137 S. W. 1154; *Graham* v. *Roberts*, 200 Mass. 152, 85 N. E. 1009. The ordering of a recall election on the part of the council is a purely ministerial act when the clerk has certified that the petition has been properly signed and presented. *Good* v. *Common Council of San Diego*, 5 Cal. App. 265, 90 Pac. 44. And mandamus will lie to compel it to call such election. *Good* v. *Common Council, etc., supra; Sansom* v. *Mercer*, 68 Tex. 488, 5 S. W. 62, 2